EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

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IN THE FAMILY COURT
AT HASTINGS

FAM-2015-020-000331
[2017] NZFC 5970

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	DAVID MARK YEOMAN Applicant
AND	VIVIENNE ANN HOWLES Respondent

Hearing:	18 July 2017
Appearances:	F Williams for the Applicant C M Hickman for the Respondent
Judgment:	28 July 2017

JUDGMENT OF JUDGE M A COURTNEY
[Application for discharge, variation or suspension of maintenance order and remission of arrears and penalties]

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[1] Mr Yeoman and Ms Howles met in around 1984. They began living together in 1986 and were married on 6 February 1989. There were no children of the marriage, although Ms Howles had two children from a prior relationship.

[2] Mr Yeoman's work resulted in the couple living overseas from time-to-time. When the parties separated in October 2005 they were living in South Africa. At that time Mr Yeoman was aged 40 and Ms Howles was aged 59.

[3] In October 2006 the parties signed a settlement agreement covering division of property and for the payment of maintenance by Mr Yeoman to Ms Howles. The maintenance component of that agreement was reflected in a consent spousal maintenance order made in the High Court of South Africa on 13 November 2006. The parties' marriage was dissolved on that same date. Ms Howles returned to live in New Zealand following the making of the maintenance order.

[4] Mr Yeoman paid maintenance in terms of the agreement between the parties until he was made redundant in June 2015. By then he had moved to live in Australia and had remarried.

[5] As a result of the cessation of maintenance payments, Ms Howles applied to the Family Court to register the South African order in New Zealand. That order was registered by notice dated 11 November 2015. In terms of the notice of registration Mr Yeoman was assessed to owe arrears up until 11 November 2015 in the sum of $8842.22. He was assessed to have an ongoing monthly liability of $2210.56 or $72.63 per day.

[6] Mr Yeoman was unaware that Ms Howles was registering the South African order in New Zealand. Having been registered in New Zealand it became enforceable in Australia by their Inland Revenue Department. Mr Yeoman became aware of the registration of the order in New Zealand when he was pursued by the Australian Inland Revenue Department for payments pursuant to the registered order.

[7] In August 2016 Mr Yeoman applied for the discharge or variation of the registered maintenance order. That application was opposed. In February 2017 an

amended application for discharge or variation of the registered order was made together with a without-notice application for suspension of the order and of the arrears due under it.

[8] Ms Howles opposes the amended application to discharge or vary the order. However, on 21 June 2017 an order was made by consent suspending operation of the maintenance order pending the determination of the substantive proceedings. Similarly, an order was made by consent suspending all arrears and penalties due under the maintenance order pending the determination of the substantive application.

[9] The issues for determination are:

(a) whether or not the maintenance order should be discharged;

(b) if the order is not discharged, whether or not it should be varied; and

(c) in either event, whether or not any arrears of maintenance and penalties should be remitted.

[10] There are a number of issues relevant to each of these points which will be considered in detail below.

[11] The parties agree that the notice of registration of order issued by the Family Court on 11 November 2015 does not accurately reflect the terms of the South African order. They also agree that the South African order does not accurately reflect the agreement between the parties regarding maintenance. There is agreement as to the corrected form of notice of registration of order which should have been issued from the Family Court in New Zealand.

[12] The parties also agree that Mr Yeoman has paid maintenance in excess of his obligation pursuant to the corrected order. However, the parties are in dispute as to how the corrected order should reflect the overpayments by Mr Yeoman and, consequently, what period of time is covered by such overpayments.

The law

[13] Sections 99 and 142 Family Proceedings Act 1980 ("FPA") have the combined effect of allowing a party to apply to discharge, vary or suspend an overseas maintenance order registered in New Zealand.

[14] As the marriage of the parties has been dissolved, the principles set out in ss 64 to 66 are to be taken into account in determining whether or not to make an order under s 99.

[15] Section 64(1) provides that following dissolution of a marriage each spouse is liable to maintain the other to the extent that such maintenance is necessary to meet the reasonable needs of the other spouse, where that spouse cannot practicably meet the whole or any part of those needs because of any one or more of the circumstances set out in subs (2).

[16] Section 64(2) provides as follows:[1]

> (2) The circumstances referred to in subsection (1) are as follows:
>
> (a) the ability of the spouses to become self-supporting, having regard to—
>
> (i) the effects of the division of functions within the marriage while the spouses lived together:
>
> (ii) the likely earning capacity of each spouse:
>
> (iii) any other relevant circumstances:
>
> (b) the responsibilities of each spouse for the ongoing daily care of any minor or dependent children of the marriage after the dissolution of the marriage:
>
> (c) the standard of living of the spouses while they lived together:
>
> (d) the undertaking by a spouse of a reasonable period of education or training designed to increase the earning capacity of that spouse or to reduce or eliminate the need of that spouse for maintenance from the other spouse if it would be unfair, in all the circumstances, for the reasonable needs of the spouse undertaking that education or training to be met immediately by that spouse—

[1] For the ease of reading the relevant legislation is redacted to delete references to civil unions and de facto relationships.

(i) because of the effects of any of the matters set out in paragraphs (a)(i) and (b) on the potential earning capacity of that spouse; or

(ii) because that spouse has previously maintained or contributed to the maintenance of the other spouse during a period of education or training.

[17] As the parties were in a de facto relationship immediately before their marriage, the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.[2]

[18] Neither party to a marriage is liable to maintain the other party after the dissolution of marriage, except as provided in ss 64 and 64A.[3]

[19] Section 64A(1) provides that when a marriage is dissolved, each spouse must assume responsibility, within a period of time that is reasonable in all the circumstances of the particular case, for meeting his or her own needs. On the expiry of that period of time neither spouse is liable to maintain the other under s 64.

[20] However, s 64A(2) goes on to note that regardless of s 64A(1) a spouse is liable to maintain the other spouse under s 64 to the extent that such maintenance is necessary to meet the reasonable needs if, having regard to matters set out in s 64A(3):

(a) it is unreasonable to require that other spouse to do without maintenance; and

(b) it is reasonable to require the first spouse to provide maintenance to the other spouse.

[21] The matters specified in s 64A(3) are:

(a) the ages of the spouses,:

(b) the duration of the marriage:

(c) the ability of the spouses partners to become self-supporting, having regard to—

[2] Section 64(3).
[3] Section 64(4).

(i) the effects of the division of functions within the marriage while the spouses were living together:

(ii) the likely earning capacity of each spouse:

(iii) the responsibilities of each spouse for the ongoing daily care of any minor or dependent children of the marriage after the dissolution of the marriage:

(iv) any other relevant circumstances.

[22] If the Court determines there is an ongoing obligation for payment of maintenance, then the matters the Court must have regard to in determining the amount of maintenance payable are:[4]

(2) The matters that the court must have regard to are as follows:

(a) the means of each spouse including—

(i) potential earning capacity:

(ii) means derived from any division of property between the spouses under the Property (Relationships) Act 1976:

(b) the reasonable needs of each spouse:

(c) the fact that the spouse by whom maintenance is payable is supporting any other person:

(d) the financial and other responsibilities of each spouse:

(e) any other circumstances that make one spouse liable to maintain the other.

(3) In considering the potential earning capacity of each spouse under subsection (2)(a)(i), the court must have regard to the effects of the division of functions within the marriage while the spouses were living together.

(4) For the purposes of subsection (3), where the marriage was immediately preceded by a de facto relationship between the spouses, the effects of the division of functions within the marriage include the effects of the division of functions within that de facto relationship.

(5) In considering the reasonable needs of each spouse under subsection (2)(b), the court may have regard to the standard of living of the spouses while they were living together.

[4] Section 65(2)–(5).

[23] When considering whether or not there is a liability to maintain the Court can have regard to the conduct of the party seeking to be maintained that:

(a) amounts to a device to prolong his or her inability to meet his or her reasonable needs; or

(b) is of such a nature and degree that it would be repugnant to justice to require the other spouse to pay maintenance.[5]

The parties' relationship

[24] The parties commenced their de facto relationship when Mr Yeoman was 21 years old and Ms Howles 40.

[25] Ms Howles had been in a previous relationship and had two children from that relationship who were aged 14 when the parties began their relationship. She had received a property settlement which she brought to the relationship with Mr Yeoman. Ms Howles had an established career as a scientific analyst.

[26] Mr Yeoman was completing his apprenticeship as an aircraft mechanic. He went on to work in aircraft engineering and maintenance. By 1992, Mr Yeoman was earning sufficient income to support both parties.

[27] Mr Yeoman's work took the parties to Western Samoa, Australia and South Africa.

[28] Ms Howles worked during the time the parties lived in New Zealand and for the five years they lived in Australia. Due to visa restrictions Ms Howles was not in paid employment for three years the parties lived in Western Samoa or the five years they lived in South Africa until they separated. At around the time the parties separated they established a gymnasium business. Ms Howles worked in that business for the following year until she returned to New Zealand. Ms Howles saw to the day-to-day running of the gymnasium but was not paid for the work she undertook.

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[5] Section 66.

[29] By the time the parties moved to South Africa Mr Yeoman had left the aviation industry and was working in the construction industry. At the time of the parties' separation Mr Yeoman was still working in the construction industry.

The parties' separation and divorce

[30] The parties separated in October 2005. They each consulted lawyers and negotiations took place regarding division of property and payment of maintenance.

[31] The parties' property was divided equally, although the gymnasium business was not able to be sold at the time. Ms Howles received AUS$47,000 from the property settlement. Mr Yeoman continued the gymnasium business following Ms Howles' return to New Zealand with a view to selling it, with the intention the proceeds of sale would be divided equally. The business was not able to be sold. Mr Yeoman surrendered the gym equipment to the franchisor to obtain release from the ongoing franchise contract. He also surrendered air conditioning equipment installed in the building in exchange for release from the ongoing lease agreement.

[32] Clause 3 of the settlement agreement between the parties dated 24 October 2006 provided for Mr Yeoman (the "Defendant") to pay maintenance to Ms Howles (the "Plaintiff") as follows:

> **Maintenance**
>
> 3.1 The Defendant shall be obliged to pay maintenance to the Plaintiff in respect of maintenance for herself as follows:-
>
> 3.1.1 R20 000,00 per month;
>
> 3.1.2 An order that the Defendant retain the Plaintiff on his medical aid and pay all her reasonably incurred medical and dental expenses such expenses to include the cost of hospitalisation, surgical treatment, spectacles, prescribed medication and allied expenses to be paid subject to the understanding that this will only apply as long as the Plaintiff resides in South Africa and subject to the understanding further that these costs are limited to the costs covered by the medical aid;
>
> 3.2.1 It is recorded that the parties have agreed that the Plaintiff's maintenance shall be directly related to the Defendant's employment income and earning capacity and that the parties have agreed that for every 5% reduction in the Defendant's

take home salary (which shall be corroborated by means of a payslip and/or chartered accountants certification) will lead to an equivalent reduction of the maintenance of the Plaintiff by 3% until such time as the Plaintiff is receiving 50% of the Defendant's take home salary and it is understood that at no stage will the Plaintiff's maintenance ever exceed 50% of the Defendant's take home salary.

3.2.2 It is recorded that the parties have agreed that the Plaintiff's maintenance shall be increased annually be the CPI rate of the country in which the Defendant resides but that this shall always be subject to the understanding that at no stage will the Plaintiff's maintenance ever exceed 50% of the Defendant's take home salary.

[33] The settlement agreement between the parties was recorded as a case in the High Court of South Africa. On 13 November 2006 the Court ordered that the parties' marriage be dissolved and:

2. That the Defendant shall pay maintenance to the Plaintiff at the rate of R20 000.00 per month;

3. That the Defendant shall retain the Plaintiff on his medical aid and pay all her reasonably incurred medical and dental expenses, such expenses to include the cost of hospitalisation, surgical treatment, spectacles, prescribed medication and allied expenses to be paid for as long as the Plaintiff resides in South Africa and subject to such costs being limited to the costs covered by the medical aid.

[34] The Court order did not incorporate clauses 3.2.1 and 3.2.2 of the settlement agreement between the parties. However, both parties have treated the order as inclusive of those provisions. Calculations and payment of maintenance have been made as if those clauses had been incorporated into the Court order with the sum of R20,000 being CPI adjusted in terms of clause 3.2.2.

Events following the South African Court order

[35] Shortly after the order was made in South Africa Ms Howles returned to New Zealand to live.

[36] Mr Yeoman continued to work in South Africa. In around 2008 the project he was working on came to an end. As a result, his ability to continue work in South Africa terminated and he moved to Australia. Mr Yeoman obtained work in Australia with Rio Tinto Limited, working in the mining industry. He married in 2014.

[37] At the beginning of each year Mr Yeoman would calculate the amount of maintenance he was required to pay having regard to the CPI Index applicable in Australia in terms of clause 3.2.2 and the exchange rate between the South African rand and the New Zealand dollar at that time. He has then paid a monthly amount in accordance with such calculations. The exchange rate between the South African rand and the New Zealand dollar has fluctuated significantly over time.[6] As a consequence, there have been many months when Mr Yeoman has paid in excess of the sum due pursuant to the South African Court order. There have also been months when he has paid less than the sum due. However, the parties agree that as at June 2015 Mr Yeoman had paid $71,180 in excess of his maintenance obligations up until that date.

[38] By early 2015 Mr Yeoman was becoming disenchanted with his work, in particular the approach being taken by his employer to himself and others the company was dealing with. By this stage, the mining industry in Australia was going through significant downturn and, according to Mr Yeoman, thousands of employees were being made redundant by Rio Tinto Limited.

[39] By email sent on 16 April 2015 Mr Yeoman advised Ms Howles that there was a potential he would not be working for Rio Tinto after mid-year. He pointed out that the chances of finding work in the then climate were slim. Even if he did find work he did not expect it would "… be on the inflated mining company salary that it has been for some years and the quantum of payment currently made would be unsustainable."

[40] By email sent 2 June 2015 Mr Yeoman advised Ms Howles that he would be ceasing work with Rio Tinto on 30 June 2015. He advised that he intended to take a break and catch up on work around his property with the intention he would start looking for work later in 2015 or early 2016. He pointed out that his last pay would be on 20 June and his payment to Ms Howles should come through a few days later. Ms Howles replied by email sent on 5 June 2015 pointing out her financial position and enquiring when Mr Yeoman would envisage being able to resume maintenance

[6] In December 2006 $NZ1 converted to R4.89. As at December 2015 $NZ1 converted to R10.22. R20,000 would convert to $NZ4890 in 2006. By December 2015 it would convert to just $NZ1957.

payments. Mr Yeoman responded by email sent 9 June 2015 that he planned to start looking for work toward the end of that year to try and be earning some income in 2016.

[41] The last payment made by Mr Yeoman in 2015 was on 23 June.

Registration of the South African Court order in New Zealand

[42] Section 136 FPA allows for maintenance orders made in Commonwealth countries to be registered in the office of a District Court in New Zealand. It is then treated as if it were a maintenance order made by a Court in New Zealand.

[43] Ms Howles filed a certified copy of the South African order in the Family Court at Hastings on 11 November 2015. In an affidavit sworn in support of the filing, Ms Howles stated that Mr Yeoman was four months in arrears at R20,000 per month. Having regard to the exchange rate provided by the Westpac Bank as at 11 November 2015 the deputy registrar calculated the monthly maintenance of R20,000 to be NZ$2210.56. Four months' arrears were calculated to be NZ$8842.22.

[44] A notice of registration of order dated 11 November 2015 was issued recording:

(a) Mr Yeoman was to pay maintenance to Ms Howles at the rate of R20,000 (NZ$2210.56 per month).

(b) Arrears up to 11 November 2015 amounted to $8,842.22.

(c) Maintenance continued to accrue from 11 November 2015 at the daily rate of $72.63 or $2210.56 per month, becoming due and payable by seventh day of the month following the month the liability accrued.

(d) All payments under the order must be paid to the Commissioner of Inland Revenue in accordance with the Child Support Act 1991.

(e) The provisions of cls 3.2.1 and 3.2.2 of the settlement agreement were included, notwithstanding that the South African Court order did not include such clauses.

[45] Whilst the notice of registration issued on 11 November 2015 incorporated a conversion from rand to New Zealand dollars as at that date, which was then included in the assessed monthly payment, it did not take account of the CPI adjustment that was also required pursuant to the notice of registration. The parties agree that the notice of registration should have recorded that the figure of R20,000 was a base figure as at November 2006, but with the appropriate CPI adjustments was to be fixed at R26,795 as at June 2015, equating to NZ$3205. It is also agreed that as at June 2015 there were no arrears due to Ms Howles.

[46] The assessment of ongoing monthly maintenance beyond June 2015, if the Court determines such maintenance is payable, is to be assessed having regard to:

(a) a monthly figure of R26,795 as at that date, to be paid in New Zealand dollars;

(b) adjustment of the figure of R26,795 by the CPI rate for Australia (the country in which Mr Yeoman resides) at the beginning of each subsequent year; and

(c) an assessment of Mr Yeoman's ongoing take home salary after that date, so that the maintenance does not exceed 50 percent of such take home salary.

Actual payments made until June 2015

[47] The parties agree that pursuant to the settlement agreement and Court order Mr Yeoman was liable to pay a total of $387,584 up to and including June 2015. It is also agreed that he has in fact paid $458,764. It is therefore agreed that as June 2015 Mr Yeoman had overpaid his maintenance obligation by $71,180.

[48] The parties agree that Mr Yeoman should receive credit for any overpayments. If the Court determines that Mr Yeoman's application for discharge of the maintenance order is to be granted and assesses any sum due to Ms Howles at less than $71,180, then Mr Yeoman does not seek reimbursement of any balance of the overpaid sum.

Payments between June 2015 and the date of hearing

[49] After being made redundant in June 2015 Mr Yeoman took time off work, carried out work around his home and retrained in psychology and hypnotherapy, qualifying in mid-2016. He then set up business as a therapist. Notwithstanding that in excess of $15,000 of savings was invested in the business, limited income was received and savings had to be used to supplement his income. Accordingly he made no maintenance payments to Ms Howles, based on his understanding that maintenance should not exceed 50 percent of his take home salary and there being no take home salary.

[50] Given his financial circumstances, Mr Yeoman commenced employment as a maintenance officer in October 2016, working four days per week.

[51] Having being advised by the Australian Inland Revenue Department of the registration of the order in New Zealand Mr Yeoman made the following payments:

(a) three payments of NZ$500 in May, June and July 2016 totalling NZ$1500; and

(b) fourteen payments of AUS$1051.79 between 4 January 2017 and 7 July 2017, totalling AUS$14,725.06, equating to NZ$16,050.31.

[52] The total of these payments is NZ$17,550.31. Ms Howles says she has received only $13,886. The discrepancy between the sums paid and the sums received has not been explained.

Interlocutory application for pre-hearing ruling on evidence

[53] On 6 July 2017 counsel for Ms Howles filed by email an application for a pre-hearing ruling determining the question of admissibility of correspondence between the parties and their counsel in South Africa as part of the settlement negotiations leading to the agreement and Court order.

[54] Unfortunately, this application was not referred to me until Monday 17 July, the day before the hearing. It was opposed by Mr Yeoman. I therefore indicated that I would rule on the application at the commencement of the hearing on 18 July.

[55] Whilst none of the documents sought to be produced were provided to the Court in support of the application, I was advised that some of them were written without prejudice. It was said they were highly relevant because they went towards the issue of intentions of the parties when they first entered into the agreement. Reliance was placed on s 57(3)(d) of the Evidence Act 2006 which allows the Court to override legal privilege which would normally attach to settlement negotiations if the interests of justice outweigh the need for the privilege.

[56] It was submitted that the documents were relevant as they have a tendency to show that the issue of the length of payment of spousal maintenance was an issue which was the subject of prior negotiation and discussion between the parties. That is an issue in the current proceedings. Ms Howles' position is that the intention of the parties at the time the agreement and order were made was that maintenance would be payable for her lifetime.

[57] Ms Howles had annexed to one of her affidavits a copy of an undated fax she sent to Mr Yeoman in the course of the negotiations. While she expressed a wish to not spend the balance of her life "in relative poverty" she also agreed that the amount of maintenance not be set in perpetuity and that it be subject to review, with the conditions for such review being agreed between the two of them as part of the settlement.

[58] Ms Howles also annexed correspondence from her lawyers to her in September 2006 which acknowledged she was leaving South Africa in November. It is not stated in the correspondence where Ms Howles was moving to. As it happens, Ms Howles

returned to New Zealand and it could reasonably be assumed her lawyers were aware of that. There is no indication that Ms Howles received advice as to the ongoing effect of any maintenance order in any other country. The current provisions contained in ss 64 and 64A dealing with maintenance following the dissolution of a marriage are exactly the same as existed in 2006. It would have been open to Ms Howles' lawyers to ascertain her ongoing entitlement to maintenance following her return to New Zealand and advise her regarding that. Alternatively, Ms Howles could have sought such advice.

[59] On behalf of Mr Yeoman in opposition to the application it was said that with the negotiations having taken place some 11 years ago he no longer had access to any of the correspondence between himself and Ms Howles, himself and his lawyer or between the lawyers. It is said that the picture would not be complete.

[60] For Mr Yeoman it was acknowledged that the possibility of payment of maintenance for the balance of Ms Howles' life was discussed and that he may have even entertained the idea for a period during early negotiations. However, it was pointed out that he did not agree to a clause being included in the settlement agreement to that effect. Mr Yeoman's evidence was he had been advised that a maintenance order could be varied or discharged on application to the Court if circumstances changed. Accordingly he, conversely, did not specify an end date in the agreement as he knew it was open to him to seek to vary or cease the maintenance in the future.

[61] In declining the application to admit further evidence I referred in particular to a letter Ms Howles received from her lawyers dated 14 September 2006 which responded to a query she had made regarding the question of maintenance for life as follows:

> With regards to the question of maintenance for life I must point out that the minute a Court in South Africa makes an order that maintenance is payable by one party to the other it follows automatically that the maintenance is for life and only a fresh application to Court can change that situation. It is therefore unnecessary to put any clarification on this point in the agreement.

[62] In my view, that was similar to a maintenance order being expressed as applying "until further order of the Court". If no further order were made it would last

until the beneficiary of the order died. As it had been made quite clear to Ms Howles that the order could be changed on a fresh application, and the Court was now entertaining such an application, I did not believe it appropriate to allow the additional documentation addressing the parties' intentions to be admitted in evidence.

Section 64(1) – What are Ms Howles' reasonable needs and is she able to practicably meet the whole or any part of those needs?

[63] Ms Howles has provided three summaries of income and expenditure. The first two of those were of limited assistance.

[64] At the hearing Ms Howles produced a declaration of financial means and their sources. She receives National Superannuation of $23,058.36 per year before tax. Ms Howles also receives discretionary benefits from WINZ for accommodation, disability and temporary additional support in the sum of $10,434.32. I understand those are non-taxable.

[65] It is acknowledged that the discretionary benefit should not be brought into account because for each dollar of maintenance received, Ms Howles loses a dollar of benefit. Accordingly, her net income for the purposes of these proceedings is the after tax pension in the sum of $20,007.52.

[66] The declaration of financial means and their sources listed a number of expenses for the previous 52 weeks totalling $37,472. The major expense incurred by Ms Howles is rent in the sum of $14,400 per year.

[67] Under cross-examination Mr Yeoman took no dispute with Ms Howles' budget, which he had only seen that morning. However, in cross-examination Ms Howles acknowledged that the claim of $2000 per annum for replacement of worn out household items such as the computer, might not be an on-going annual expense. However, her claim for petrol, car maintenance and running costs of $2400 per annum ($46.15 per week) would include no provision to fund replacement of her car at some stage. I treat the claim for replacement of household items to include a sum to cover eventual replacement of her car.

[68] The expenses included payments to Legal Aid and WINZ in the sum of $480 each per year. It is not stated how long those payments will need to continue. Repayments to WINZ are, as I understand it, of $1500 paid by Mr Yeoman which should have been offset by a similar reduction in the discretionary benefits Ms Howles receives. If that is the case those payments should not continue beyond just over three years.

[69] Whilst the expenditure claimed by Ms Howles is significantly greater than could be met by her superannuation (and is at least being met in part at the moment by additional benefits) I believe Mr Yeoman's acceptance of the budget was appropriate.

[70] I therefore find that Ms Howles cannot practicably meet part of her reasonable needs. I therefore need to determine whether her inability to meet those needs is because of any one or more of the circumstances set out in s 64(2).

Section 64(2)(a)(i) – the ability of the parties to become self-supporting having regard to the effects of the division of functions within the marriage and the preceding de facto relationship

[71] Traditional domestic roles were carried out by the parties with Ms Howles carrying out domestic work within the home and Mr Yeoman eventually being the breadwinner and undertaking work outside the house and in the garden.

[72] At the time the parties commenced living together Ms Howles had an established career as a scientific analyst. Her children were 14 years old by the time the parties commenced living together and there was no requirement for her not to work in order to care for the children.

[73] Whilst there were some years during which Ms Howles was not able to engage in paid employment, she was able to work for a number of the years. She worked as a science technician, information officer, administration officer, technical author and technical editor. She also managed the parties' gymnasium in South Africa, although this was in her capacity as an unpaid co-owner.

[74] I find that the division of functions within the relationship did not impact on Ms Howles' ability to be self-supporting such that her career or experience had been adversely affected by the division of functions.

Section 64(2)(a)(ii) – the ability of the spouses to become self supporting having regard to the likely earning capacity of each spouse

[75] Ms Howles is now aged 71 and it is submitted that her likely earning capacity is now nil.

[76] Mr Yeoman is of the view that the type of work Ms Howles undertook during the marriage did not require the physical capabilities of a younger person. It is said that Ms Howles' particular skill set is more intellectual than physical and consequently she could still find some work, even on a part time basis, to supplement her pension. It is suggested that Ms Howles has been content since she returned to New Zealand to simply receive the monthly maintenance paid by Mr Yeoman, supplemented by the superannuation and not bother looking for work.

[77] Payments by Mr Yeoman throughout 2014 and for the first six months of 2015 were at the rate of $4936 per month. Taken with the net superannuation payments (which is $1667 per month based on the past 52 weeks, so allowing for, say, $1400 per month in 2014) this provided Ms Howles with a net annual income of just over $76,000 per year for those 18 months. It is submitted Ms Howles has therefore simply decided not to look for work, given the reasonable income she was receiving.

[78] Ms Howles' evidence is that she has actively looked for work since she returned to New Zealand. She has looked for work in the science area, applying to Plant and Food for laboratory jobs, applying to schools for laboratory jobs, plus looking for gymnasium employment and administration jobs. She has not had one interview for a job despite the applications made. She has also looked at working from home but has not been able to find any appropriate work to engage in. She checks the online job site "Seek" and the local paper daily for jobs, without success.

[79] I accept that at age 71, Ms Howles' likely earning capacity is realistically extremely minimal or non-existent.

[80] Mr Yeoman has extensive experience in the aviation, construction and mining industries. At the time he ceased employment with Rio Tinto in June 2015 his total gross remuneration package (including superannuation and insurance contribution) was AUS$494,580.73. Whilst he was made redundant by Rio Tinto, he had earlier decided to leave that work because of the impact it was having on his health. Mr Yeoman took six months off to do some work around his home before looking for new employment. He has taken a totally different career path, retraining in hypnotherapy and life coaching. Efforts to invest in and increase that business, principally by way of advertising, have been curtailed pending the resolution of these proceedings. As a consequence Mr Yeoman has received little income from his own enterprise. He is now employed as a maintenance officer working four days a week and earning AUS$40,000 per year (gross). This equates to AUS$2,864 net per month (NZ$3121.76) or AUS$660.92 (NZ$720) per week.

[81] Mr Yeoman's wife works two days per week earning AUS$24,000 per annum (gross). At this stage there appears to be no prospect of increasing the number of days Mrs Yeoman works.

[82] It is said that Mr Yeoman's hours may be cut to three days per week. There is no indication as to when that will take place.

[83] Mr Yeoman anticipates that the business ventures which both he and his wife intend to develop will reach a stage where they are earning around AUS$75,000 per annum. At the moment their combined net annual income is AUS$61,809.

[84] Mr and Mrs Yeoman had purchased a property in Australia prior to his redundancy. There is a significant mortgage on that property. Their income and expenditure is such that they have a shortfall of AUS$2000 per annum which is being met by using credit cards and drawing down on the existing mortgage.

[85] Whilst Mr Yeoman's current income is low, he expects that to increase over the forthcoming years. Whilst he does have the potential to earn significantly more by returning to his previous employment, I accept there are good health reasons why he chooses not to.

[86] His current take home salary is assessed at NZ$3121.76 per month. It is accepted that at the moment Mr Yeoman's take home salary is fully committed to meeting outgoings. However, he does have the earning capacity to be self supporting.

Section 64(2)(a)(iii) – the ability of the spouses to become self supporting having regard to any other relevant circumstances

The intention of the agreement and the South African order

[87] For Ms Howles it is submitted that it is highly relevant the order was based on a negotiated contractual agreement between the parties. Parties entering into a contract expect the terms of the contract to be honoured and for that contract only to be altered by further agreement between the parties. In that regard clause 8.2 of the settlement agreement is referred to, which states:

> No variation, abandonment or waiver of any rights or obligations hereunder shall be binding unless reduced to writing and signing by both parties.

[88] It is submitted that the order should be read subject to this clause. Accordingly it could only be varied by agreement between the parties.

[89] Mr Yeoman says he recognised that Ms Howles was going through a difficult time following the separation and pending her return to New Zealand. He wished to ensure that she was provided for financially so that she could get herself back to New Zealand and get established. He did not envisage a need for ongoing maintenance once Ms Howles established herself.

[90] Mr Yeoman says he was adamantly opposed to any agreement or order which would bind him for Ms Howles' lifetime. He points out the agreement and the order do not specify that maintenance will continue throughout Ms Howles' lifetime. The

advice he received was that the order could be changed in the future as circumstances changed.

[91] Both parties received legal advice about the ongoing effect of the maintenance order. Both were aware there was the possibility it could be changed in the future by way of application to the Court if circumstances changed. Ms Howles accepted Mr Yeoman could die or cease to receive an income if he were ill or injured. She knew that in such case there would be no maintenance payable under the order. I do not accept that Ms Howles can rely on the order to say she could expect to be maintained for life and have no obligation to become self supporting.

Mr Yeoman's choice of a change of career should not disadvantage Ms Howles

[92] For reasons set out above I accept Mr Yeoman had valid reasons to cease his employment in the industry within which he had previously worked. His retraining and the establishment of his new business ventures will, of necessity, involve a period of reduced income.

Mr Yeoman should have made provision for future maintenance out of his redundancy payment

[93] Mr Yeoman's amended application seeks to discharge the maintenance order upon the basis that the payments he has made to date have met all of his obligations to Ms Howles taking into account the factors contained in s 64 and s 64A. Alternatively, he seeks to vary the order to set the payments under it at zero dollars or to set an end date for future payments so that his liability does not continue indefinitely.

[94] As the South African order continues in force (subject to the agreed suspension with effect from June this year) I will first address whether or not there was any maintenance payable to Ms Howles from the redundancy payment pursuant to the order. If so, then such payments can be offset against overpayments made by Mr Yeoman, or can be remitted if the Court determines that to be the appropriate outcome.

[95] It is submitted for Ms Howles that Mr Yeoman, knowing his employment and income was to cease, simply unilaterally ceased payments under the order without any provision for the ongoing needs of Ms Howles.

[96] Mr Yeoman took the view that after June 2015 his take home salary was nil and consequently his maximum liability in terms of the settlement agreement was also nil.

[97] Mr Yeoman's employment agreement with Rio Tinto required either party to give six months' notice of termination of employment. As is often common in redundancy situations, Mr Yeoman was not required to work the full notice period. As it transpired he worked one month of the notice period and was not required to work out the remaining five months.

[98] The net redundancy payment received by Mr Yeoman was AUS$423,642.72. The gross redundancy payment made to Mr Yeoman was made up of several components including:

Unworked notice payment $204,048.33.

Additional notice payment $123,645.18.

Ex-gratia service payment $288,505.42

Pro-rata incentive payment $39,323.24

[99] The unworked notice payment was the equivalent of five months' of his total remuneration package. It equated with the balance of the notice period he was not required to work out.

[100] The additional notice payment of $123,645.18 was the equivalent of three months' of Mr Yeoman's total annual remuneration package.

[101] The ex-gratia service payment was calculated having regard to the length of time Mr Yeoman had worked for the company.

[102] The pro-rata incentive payment was almost one half of the target incentive payment applicable to Mr Yeoman on an annual basis. That was to reflect the six months' service for that year he had provided to the company.

[103] The redundancy payment was therefore a combination of both forward and backward looking compensations. Cases considering redundancy in the context of division of relationship property have looked to the nature of the compensation payment to determine its status for division of relationship property.[7]

[104] If Rio Tinto had required Mr Yeoman to work out his full notice period he would have received the unworked notice payment by way of five equal monthly payments through to and including November 2015. Whilst a lump sum payment was included Mr Yeoman's take home salary in June 2015, I consider it to be a lump sum payment of his take home salary for each of the following five months. Accordingly, Mr Yeoman had an obligation under the maintenance order to pay maintenance for those five months.

[105] Notwithstanding the notice period applicable to Mr Yeoman's employment agreement was some six months, he was paid an additional notice payment equivalent to three months' salary. The company's redundancy policy was not provided to the Court. It may be that in the event of a redundancy the company is required to provide a further three months notice over and above the usual six months' notice. I am not in a position to determine that, but I do find that a further three months' notice was paid to Mr Yeoman. Accordingly, in June 2015 he received a lump sum equivalent to his income for the following eight months through to and including February 2016. Mr Yeoman had an ongoing obligation to Ms Howles for those months under the order.

Ms Howles' lack of employment since her return to New Zealand

[106] For the reasons set out above I accept that Ms Howles attempted to find work following her return to New Zealand but was unable to do so.

Ms Howles' decision to financially support her adult son

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[7] *Wharfe v Wharfe* (1988) 4 NZFLR 634 (HC); *Roberts v Roberts* [1990] NZFLR 193 (HC).

[107] [Ms Howles' son] had been involved in a motor vehicle accident while living in Australia. He sold a home he owned in Australia and returned to New Zealand. He purchased a home in New Zealand but required a mortgage to do so. As [Ms Howles' son] had no record of saving in New Zealand he was not eligible for a mortgage. Ms Howles therefore applied for a mortgage to assist with the purchase of the property. As a consequence, the property is registered in the joint names of Ms Howles and her son.

[108] I accept Ms Howles' evidence that, despite the property being registered in joint names, Ms Howles has no expectation of a legal interest in the property which she can realise by having it sold.

[109] At the time of purchase of the property [Ms Howles' son]was not fit enough to return to work. Ms Howles therefore paid the mortgage from 30 September 2013 until 29 June 2015 when the payments from Mr Yeoman ceased. Ms Howles paid a total of $13,034.52.

[110] [Ms Howles' son] found full-time employment in April 2016 and is now meeting the mortgage payments. The mortgage was for $30,000 when first drawn down and as at February 2017 the balance outstanding was $11,199.

[111] Ms Howles also provided $20,000 to [her son] towards the purchase of his home. She views this not as a payment of money from her but as fulfilling her own mother's wish to provide for her grandchildren. Ms Howles advised [her son] at the time the money was paid that this would largely constitute his inheritance from her. However, Ms Howles says that [her son] has offered to pay the money back if she requests it.

[112] It is submitted for Mr Yeoman that the $20,000 and the $13,034 paid on [Ms Howles' son's] mortgage could have been invested to produce an income for Ms Howles.

[113] Whilst payment of those sums was made at a time when Ms Howles had the funds to do so, I believe it would have been more prudent of her to have retained such

funds to provide for her own future. I do not accept it is appropriate that she dispose of funds to her son and then seek maintenance from Mr Yeoman as a result of a lack of her own means. Ms Howles can ask her son to repay to her the $33,034 she has paid to him or for his benefit. Ms Howles may elect not to request repayment from her son. That is her choice. However, if she chooses not to request repayment she should not expect Mr Yeoman to make up that shortfall.

Ms Howles could move in to live with her son in order to reduce or eliminate her accommodation costs

[114] [Ms Howles' son] owns what is described as a small two bedroom cottage. Whilst it could no doubt accommodate Ms Howles, that would be at significant inconvenience to her. She would have to move into a small room, give up a large number of her own personal possessions and furniture and, most importantly, give up her independence. I believe it would be unreasonable to require Ms Howles to take this step to reduce her expenses.

Ms Howles' failure to provide for the future

[115] Whilst the parties appear to have lived a more than comfortable lifestyle throughout their relationship, there appears to have been very little relationship property to divide upon separation. Ms Howles received AUS$47,000 from the relationship property division. Whilst it was expected there may be further funds to be received from the sale of the gymnasium business, that did not eventuate.

[116] Ms Howles used her relationship property settlement to purchase a car and furniture and to make several trips to Melbourne to see [her son].

[117] Ms Howles qualified for national superannuation in 2011. I have not been provided with the sums received by her by way of national superannuation since then. A search of the Work and Income NZ website shows the after tax sum paid to a single person living alone as at 1 April 2016 was $769.52 per fortnight ($19,994 per annum) and as at 1 April 2015 was $749.06 per fortnight ($19,475 per annum). The sums for prior years were not available. However I expect the average over the six years since

Ms Howles qualified for national superannuation would be not less than $18,000 per annum. Ms Howles would have therefore received at least $108,000 by way of superannuation over those six years.

[118] The sums received by Ms Howles as maintenance payments have varied. However, for the years since Ms Howles became entitled to national superannuation through to 2015 the sums paid to her for maintenance have been:

2011 $55,005

2012 $56,841

2013 $57,960

2014 $59,232

2015 (six months) $29,631

[119] Assuming the net superannuation received by Ms Howles in 2014 was in the region of $17,000, she received a net payment in that year of over $76,000. That would be equivalent to a gross salary of around $100,000.

[120] The total maintenance paid to Ms Howles up to June 2015 was $458,764. When the superannuation of $108,000 and relationship property of AUS$47,000 are taken into account (and excluding any additional WINZ payments received) Ms Howles has received almost $614,000 over the past 11 years.

[121] Ms Howles acknowledged that after she commenced receiving national superannuation in 2011 she "… was better off and able to afford luxuries and the odd trip overseas". Ms Howles stated that she is not an extravagant person and is able to live modestly having inexpensive hobbies such as gardening, walking the dogs and playing bridge.

[122] Based on the declaration of financial means provided by Ms Howles she had total expenses in the past 52 weeks of $37,472. The income she was receiving by way

of maintenance alone from Mr Yeoman was, in 2013 and 2014, more than $20,000 in excess of her expenses. In both those years she was also receiving national superannuation.

[123] Allowing for Ms Howles' expenses at her current rate for each of the past 11 years would produce total expenses of just over $412,000.

[124] Just where the additional $200,000 was spent is not identified apart from the sums for [Ms Howles' son]. Ms Howles has not replaced the motor vehicle, refrigerator or microwave she purchased when she returned to New Zealand. She has no savings. I can only conclude that she has spent all income and maintenance received together with her share of relationship property.

[125] Ms Howles has made no attempt to retain and invest funds for her future. She has had more than adequate funds to do so. Had she had done so she may have been able to purchase a modest property, with mortgage payments now being significantly less than her current rental payments. Alternatively, she may have had funds invested to provide additional income over and above the national superannuation received by her.

[126] A complicating factor, however, if she had invested funds to produce an income may have been that she would have had to use those funds before she could qualify for any discretionary benefits from WINZ. However, I understand she has only received those benefits since Mr Yeoman ceased paying maintenance, so saving and investing money prior to then would not have been of relevance. In addition, if she had purchased a home I do not understand she would have to sell the home in order to qualify for the discretionary benefits. Obviously, she would not need an accommodation supplement if she were living in her own home.

Section 64(2)(b) – the responsibilities of each spouse for the ongoing daily care of any minor or dependent children of the marriage

[127] This is agreed by counsel to not be a relevant factor.

Section 64(2)(c) – the standard of living of the spouses while they lived together

[128] The parties enjoyed a high standard of living during their relationship. That was due, initially, to the income and capital Ms Howles brought to the relationship. Later in the relationship it was Mr Yeoman's career that provided significant income. Whilst it appears significant income was available during the relationship there was only modest relationship property for division at the end of the relationship.

[129] It is not established that the standard of living during the relationship has caused an inability on the part of Ms Howles to meet her own current needs. In addition, the reality is that now neither party has the ability to maintain the standard of living that existed during the relationship. This is not a situation where the person seeking maintenance has suffered a significant fall in their standard of living whilst the person from whom maintenance is claimed continues to live the high life.

Section 64(2)(d) – the undertaking of education designed to increase earning capacity or eliminate the need for maintenance

[130] There is no suggestion that Ms Howles wishes to undertake training or education at this stage.

Have the factors referred to in s 64(2) caused Ms Howles' inability to practicably meet the whole or any part of her needs?

[131] Whilst Ms Howles has little or no ability to be self supporting due to her lack of earning capacity, I find that the current inability to practicably meet the whole or any part of her needs is due to her failure to make adequate provision for herself for the future. She was well aware that if Mr Yeoman died or became ill such that he could not earn an income then she would not be entitled to any maintenance. She was also well aware that his income could reduce to a level such that the maintenance payable to her could be less than the CPI adjusted R20,000 sum.

[132] The sums received by Ms Howles by way of property settlement, maintenance and superannuation have significantly exceeded her reasonable needs over the past 11

years. That is due to Ms Howles' failure to adequately provide for herself for her future. She has chosen to spend those funds in various ways which have not been explained. Mr Yeoman is not responsible for her current lack of means to support herself.

[133] Ms Howles had received significant funds by way of property division, maintenance and superannuation by the time Mr Yeoman was made redundant in June 2015. Whilst he still had an obligation under the order beyond that date, I believe Ms Howles should have become self supporting by then. I therefore consider the maintenance order should be discharged with effect on 30 June 2015.

[134] In the event that I am incorrect in coming to this conclusion I will go on to address the remaining factors relevant to spousal maintenance.

Section 64A(1) - spouses must assume responsibility for meeting their own needs within a period of time following the dissolution of marriage that is reasonable in all the circumstances

[135] As s 64A(2) allows for an ongoing obligation to maintain regardless of the time since the dissolution of marriage, I will consider the matters under that section and then determine if s 64A(1) should apply.

Section 64A(2) - is it unreasonable to require Ms Howles to do without maintenance from Mr Yeoman and is it reasonable to require him to pay maintenance to her?

[136] In determining this question the Court is required to have regard to the matters set out in s 64A(3).

The ages of the spouses

[137] At the date of separation Ms Howles was 59 and Mr Yeoman 40. At the time of hearing Ms Howles is aged 71 and Mr Yeoman aged 52. With that 19 year age gap, Mr Yeoman is going to be in a better position to earn income in forthcoming years than Ms Howles will be.

[138] Because of her age, Ms Howles is entitled to national superannuation and can also receive benefits available to the holder of a SuperGold card including free public transport and discounts on various goods and services.

[139] Mr Yeoman is not eligible for any benefits from the Australian Government and will not be entitled to a pension when he reaches the Australian pension eligibility age of 67. He will be entitled to a pension from his own private superannuation scheme.

[140] I agree with the submission made on behalf of Mr Yeoman that the age of the parties is a relevant factor, but is not necessarily determinative. It needs to be balanced against other relevant factors.

The duration of the relationship

[141] The parties were in a relationship for some 19 to 20 years. That was a lengthy relationship, but it also needs to be recognised that the parties' marriage has now been dissolved for almost eleven years.

[142] Mr Yeoman has been paying maintenance in accordance with his interpretation of the South African order for ten and a half years. This is equivalent to over half of the period for which the parties were in a relationship. It is not stated if he paid maintenance for the year following separation until the marriage was dissolved. However, having regard to his approach to paying maintenance I believe it is almost certain he would have been maintaining Ms Howles throughout that time.

The ability of the spouses to become self supporting having regard to the factors set out in ss 64(2)(a)(i), (ii), (iii) and s 64(2)(b)

[143] Each of these factors has been considered when addressing s 64 above.

Conclusion

[144] Whilst Ms Howles' age is a significant factor, I believe the fact that she has taken no steps to provide for her future means that it would be unreasonable to require Mr Yeoman to provide maintenance to her.

[145] Related to this is the time following dissolution of the marriage that is reasonable in the circumstances for each party to resume responsibility for meeting their own needs under s 64A(1). The payment of a significant sum of maintenance, in particular up to and including June 2015, gave Ms Howles ample opportunity following dissolution of the marriage to set herself up financially. I believe that the period of just over ten and a half years since the dissolution of marriage has been a reasonable time in the circumstances of this case for Ms Howles to assume responsibility for meeting her own needs.

[146] In any event, it is agreed that Mr Yeoman had overpaid maintenance as at June 2015. In the event that I am incorrect in my determination of the application of s 64A(1) as at today's date, I will consider the period of time through until when overpayment of maintenance runs.

Mr Yeoman's obligations pursuant to the South African order and payments made by him

[147] I have already determined that there is no criticism of Mr Yeoman for ceasing work in June 2015 in his previous field of employment. The decision to take a change in both life and work style is one that was reasonably open to him. I do not believe he can be required to continue in a stressful job simply in order to sustain a higher level of maintenance payments for Ms Howles.

[148] If maintenance for eight months following being made redundant in June 2015 should have been paid, the parties agree that, allowing for the rand/NZ$ exchange rate at the time, the CPI adjusted figure of R26,795 per month amounted to $3205 as at June 2015. Applying that figure for the six months through until the end of 2015 would produce maintenance payable of $19,230. It is acknowledged that the CPI adjustment applicable at the beginning of 2016 was 1.3 percent. That would bring the monthly maintenance figure to $3064 from January 2016. Two months at that rate is

$6128. This would produce a total for the eight months following redundancy of $25,358.

[149] I note, however, that the schedule provided on behalf of Ms Howles includes the actual rand/New Zealand dollar cross rate for each of the last six months of 2015. During that time there was a significant decrease in the value of the rand as against the New Zealand dollar. Applying the actual New Zealand dollar value to R26,795 for each of those months would have resulted in a maintenance payment to Ms Howles of $13,453.

[150] Ms Howles' summary then applies the figure of $2210 per month for each of the months throughout 2016. Two months at that figure is $4420. Using the figures in Ms Howles' schedule, the total sum payable for the eight months following June 2015 would be $17,873.

[151] Mr Yeoman commenced employment on 10 October 2016. His net earnings are $3121 per month. Applying the terms of the Court order, maintenance would then be payable for nine months from October 2016 to the date of hearing at the rate of $1560[8] per month, totalling $14,040.

[152] It is agreed that as at June 2015 Mr Yeoman had overpaid his maintenance obligation by $71,180. Since ceasing employment with Rio Tinto in 2015 Mr Yeoman has paid $17,550. However, Ms Howles says she has only received $13,886.

[153] If Mr Yeoman were required to pay maintenance from June 2015 the alternative calculations of overpayment up to the date of hearing having regard to the above is as follows:

(a) "Redundancy maintenance" of $25,358 and maintenance of $17,550 paid since June 2015

Overpaid as at June 2015	71,180
Less redundancy maintenance	25,358

[8] This is less than the CPI adjusted R20,000 converted to NZ$, but is capped at this sum by virtue of being 50 percent of Mr Yeoman's take home salary.

	45,822
Plus paid since June 2015	17,550
	63,372
Less maintenance due up to date of hearing	14,040
Overpayment	$49,332

(b) "Redundancy maintenance" of $17,873 and maintenance of $17,550 paid since June 2015

Overpaid as at June 2015	71,180
Less redundancy maintenance	17,873
	53,307
Plus paid since June 2015	17,550
	70,857
Less maintenance due up to date of hearing	14,040
Overpayment	$56,817

(c) "Redundancy maintenance" of $25,358 and maintenance of $13,886 paid since June 2015

Overpaid as at June 2015	71,180
Less redundancy maintenance	25,358
	45,822
Plus paid since June 2015	13,886
	59,708
Less maintenance due up to date of hearing	14,040
Overpayment	$45,668

(d) "Redundancy maintenance" of $17,873 and maintenance of $13,886 paid since June 2015

Overpaid as at June 2015	71,180
Less redundancy maintenance	17,873
	53,307
Plus paid since June 2015	13,886
	67,193
Less maintenance due up to date of hearing	14,040
Overpayment	$53,153

[154] Those various calculations of overpayment of maintenance then need to be set off against what would be the expected future income for Mr Yeoman, to see how far ahead he has potentially paid maintenance. He has referred to the possibility that his employment will be reduced from four days per week to three days per week. However, he also talked of the possibility of developing and increasing income from the businesses he wishes to set up. For the purposes of this assessment I will not assume a reduction of income.

[155] Mr Yeoman had anticipated he and his wife might move to the position where they were receiving a combined income in the region of AUS$75,000 between them. I perceived that most of the income increase was anticipated to come from Mrs Yeoman's business. However, I will undertake calculations assuming Mr Yeoman's income increases by 25 percent to AUS$50,000 per annum. Consequently the figure for 50 percent of his take home salary will increase by 25 percent to NZ$1950. Based on what Mr Yeoman has said that is an income he could reach within 12 months.

[156] Accordingly, allowing for half of his take home salary over the next 12 months at the current rate of $1560 per month and thereafter at $1950 per month, the alternative scenarios in [153] would result in maintenance in each case being paid in advance as follows (rounded down to a whole month);

(a) 27 months through to October 2019.

(b) 31 months through to February 2020.

(c) 25 months through to August 2019.

(d) 29 months through to December 2019.

[157] These projections show that payments made to date by Mr Yeoman would meet his maintenance obligations through to at least August 2019 and perhaps out to February 2020. Taking the earliest of those dates he has already paid maintenance covering 12 years eight months, excluding any allowance for time he paid

maintenance in the year before the order was made. Taking the latter date he has paid 13 years and three months of maintenance, once again excluding any time he paid maintenance in the year prior to the making of the order.

[158] Even if Ms Howles could establish an obligation on Mr Yeoman to be paying maintenance now, I do not accept that it could extend beyond the period for which he has already paid maintenance.

Orders

[159] By consent I amend the notice of registration issued in this Court dated 11 November 2015 by:

(a) deleting from the second paragraph the words "(NZ$2210.56) per month" and replacing them with the words "as at 13 November 2006"; and

(b) deleting the penultimate paragraph and replacing it with:

> "According to a certificate given by **The High Court of South Africa at Durban, Republic of South Africa** and filed in this Court and allowing for the above CPI adjustment maintenance continues to accrue until otherwise advised from 30 June 2015 at **NZ$3205** per month becoming due and payable by the seventh day of the month following the month the liability accrued."

[160] The order of the High Court of South Africa at Durban, Republic of South Africa, filed in this Court and given effect to in a notice of registration dated 11 November 2015 (as amended) is discharged with effect from 30 June 2015.

[161] No arrears are payable pursuant to the High Court of South Africa order as recognised in the notice of registration dated 11 November 2015 (as amended).

[162] By consent, the applicant is not required to repay to the respondent any overpayment of maintenance paid by the respondent to the applicant.

[163] If any penalties have accrued as a result of the notice of registration, such penalties are remitted.

[164] Given the respondent's approach to the overpaid maintenance, I assume he will not be seeking costs on these proceedings. If, however, there is any issue as to costs memoranda are to be filed and served within 28 days.

M A Courtney
Family Court Judge